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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

REGINA BUENAVENTURA  
DELA CRUZ,  
Plaintiff,  
v.  
CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,  
Defendant.

} Case No. CV 13-06286-DFM  
}  
} MEMORANDUM OPINION AND  
} ORDER  
}

Plaintiff appeals from the denial of her application for Social Security benefits. On appeal, the Court concludes that the administrative law judge (“ALJ”) erred in failing to consider the impact of Plaintiff’s mental impairments on her residual functional capacity (“RFC”). Therefore, the Court reverses the ALJ’s decision and remands to the ALJ for consideration of the functional limitations associated with Plaintiff’s mental impairments.

I.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff filed applications for Social Security Disability Insurance (“SSDI”) and Supplemental Security Income (“SSI”) benefits, alleging

1 disability beginning July 2, 2008. Administrative Record (“AR”) 14.

2 At step two of the sequential disability analysis, the ALJ determined that  
3 several of Plaintiff’s physical impairments were “severe,” but that her mental  
4 impairments of depression and anxiety, while medically determinable, were  
5 not severe. AR 17-19. In so finding, the ALJ rejected, at least in part, opinions  
6 from two physicians. Dr. James Scaramozzino, a consultative examiner,  
7 determined based on a review of Plaintiff’s clinical records and an in-person  
8 examination that Plaintiff was moderately impaired in her intellectual  
9 functioning, daily activities, social functioning, ability to deal with changes in  
10 a work setting, ability to complete a normal workday and workweek without  
11 interruption and at a consistent pace, and ability to accept instructions from a  
12 supervisor and respond appropriately. AR 685. Dr. G. Johnson, a state  
13 consulting physician, reviewed the medical record and determined that  
14 Plaintiff suffered from mild restrictions in daily living and social functioning,  
15 and moderate difficulties in maintaining concentration, persistence, or pace.  
16 AR 701.

17 The ALJ found that she could not afford Dr. Scaramozzino’s opinion  
18 “significant weight” because it was “internally inconsistent,” it contradicted  
19 other evidence, and it “afford[ed] the maximum possible credibility to the  
20 claimant’s subjective complaints of pain and symptoms and functional  
21 limitations.” AR 18. The ALJ assigned weight only to the mild limitations  
22 noted in Dr. Johnson’s opinion, determining that the moderate limitation in  
23 concentration, persistence, or pace was unsupported by the medical evidence  
24 and inconsistent with other medical opinion. AR 19.

25 Because the ALJ determined that certain of Plaintiff’s physical  
26 impairments were severe, she proceeded with an RFC assessment that  
27 synthesized limitations associated with her physical impairments. AR 20-24.  
28 The ALJ then determined, based on the testimony of a vocational expert

1 (“VE”) that Plaintiff remained able to perform her past relevant work as a  
2 cashier. AR 24.

3 **II.**

4 **ISSUES PRESENTED**

5 The parties dispute whether the ALJ (1) properly rejected the opinions of  
6 Plaintiff’s treating and examining physicians; (2) properly determined that  
7 Plaintiff’s mental impairments were non-severe at step two of the five-step  
8 sequential evaluation process; and (3) properly determined that Plaintiff’s  
9 mental impairments did not meet the one-year durational requirement. See  
10 Joint Stipulation (“JS”) at 14.

11 **III.**

12 **STANDARD OF REVIEW**

13 Under 42 U.S.C. § 405(g), a district court may review the  
14 Commissioner’s decision to deny benefits. The ALJ’s findings and decision  
15 should be upheld if they are free from legal error and are supported by  
16 substantial evidence based on the record as a whole. 42 U.S.C. § 405(g);  
17 Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v. Astrue, 481 F.3d  
18 742, 746 (9th Cir. 2007). Substantial evidence means such relevant evidence as  
19 a reasonable person might accept as adequate to support a conclusion.  
20 Richardson, 402 U.S. at 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th  
21 Cir. 2007). It is more than a scintilla, but less than a preponderance.  
22 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d  
23 880, 882 (9th Cir. 2006)). To determine whether substantial evidence supports  
24 a finding, the reviewing court “must review the administrative record as a  
25 whole, weighing both the evidence that supports and the evidence that detracts  
26 from the Commissioner’s conclusion.” Reddick v. Chater, 157 F.3d 715, 720  
27 (9th Cir. 1996). If the evidence can reasonably support either affirming or  
28 reversing, the Court may not substitute its judgment for that of the ALJ.

1 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999).

2 **IV.**

3 **DISCUSSION**

4 Plaintiff contends that the ALJ improperly rejected the opinions of  
 5 numerous physicians, and consequently failed to synthesize into Plaintiff's  
 6 RFC assessment certain limitations described by those physicians. JS at 14-21,  
 7 37-39. The Court's review of the record reveals that, at a minimum, the ALJ  
 8 failed to properly consider the mental impairments described in the medical  
 9 opinions of Drs. Scaramozzino and Johnson in reaching an RFC assessment.  
 10 Because the Court finds that the decision of the ALJ must be reversed on that  
 11 basis, the Court will not address Plaintiff's remaining contentions.

12 The portion of the ALJ's decision dedicated to assessing Plaintiff's RFC  
 13 is devoid of any mention of Plaintiff's mental impairments, the opinions of  
 14 Drs. Scaramozzino and Johnson, or the mental health observations made  
 15 during Plaintiff's three years of visits to Marian Community Clinics. An ALJ  
 16 must consider all of a claimant's medically determinable impairments,  
 17 including those determined to be non-severe, in reaching an RFC assessment.  
 18 See 20 C.F.R. §§ 404.1545(e), 416.945(e); SSR 96-8P, 1996 WL 374184 ("In  
 19 assessing RFC, the adjudicator must consider limitations and restrictions  
 20 imposed by all of an individual's impairments, even those that are not 'severe.'  
 21 While a 'not severe' impairment(s) standing alone may not significantly limit  
 22 an individual's ability to do basic work activities, it may--when considered  
 23 with limitations or restrictions due to other impairments--be critical to the  
 24 outcome of a claim."). Because the ALJ determined that Plaintiff's mental  
 25 impairments of depression and anxiety were medically determinable, it was  
 26 error for the ALJ to fail to consider these impairments in her RFC analysis.

27 Although it is true that the ALJ considered and partially rejected the  
 28 opinions of Drs. Scaramozzino and Johnson in reaching her determination

1 that Plaintiff's mental impairments were not severe, the record shows that the  
 2 ALJ failed to consider the opinions (and the underlying mental impairments  
 3 they describe, supported by the clinical notes from Marian Community  
 4 Clinics) in assessing Plaintiff's RFC. As the ALJ noted at step two, the RFC  
 5 assessment "requires a more detailed assessment" as compared with the  
 6 assessment of whether an impairment is severe at step two. AR 19. Rather than  
 7 provide such an assessment, however, the ALJ noted only that "the following  
 8 residual functional capacity assessment reflects the degree of limitation the  
 9 undersigned has found in the 'paragraph B' mental function analysis." Id. The  
 10 ALJ therefore did not explain how she determined that the medically-  
 11 determinable mental impairments described in the partially-credited opinions  
 12 of Drs. Scaramozzino and Johnson would not lead to RFC limitations when  
 13 synthesized with Plaintiff's other medically determinable impairments. This  
 14 error was compounded by the ALJ's imprecision in describing the degree to  
 15 which she credited Dr. Scaramozzino's opinion. See AR 18. On remand, in  
 16 determining the impact of Plaintiff's mental impairments on her RFC, the ALJ  
 17 should take care to properly assess the medical opinions, considering the issues  
 18 mentioned here and describing the extent to which each physician's opinion is  
 19 credited in terms that are readily susceptible to review.

20 In light of the ALJ's silence, the Court may not presume that the ALJ  
 21 properly discredited the medical opinions to such an extent that Plaintiff's  
 22 RFC would be unaffected by the mental impairments they describe, nor accept  
 23 the post-hoc justifications provided by the Commissioner for doing so.<sup>1</sup> See,  
 24 e.g., Johnson v. Colvin, No. 12-435, 2013 WL 3337772, at \*6 n.3 (C.D. Cal.  
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26 <sup>1</sup> Indeed, the ALJ explicitly credited the opinion of Dr. Johnson to the  
 27 extent of the mild limitations that it described, see AR 19, but made no  
 28 mention of this opinion in her RFC analysis.

1 July 1, 2013) (“While the Commissioner now offers other reasons to explain  
2 the ALJ’s [decision], the Court cannot entertain these post hoc  
3 rationalizations.”).

4 The law is well established that the decision whether to remand for  
5 further proceedings or simply to award benefits is within the discretion of the  
6 Court. See, e.g., Salvador v. Sullivan, 917 F.2d 13, 15 (9th Cir. 1990); Lewin v.  
7 Schweiker, 654 F.2d 631, 635 (9th Cir. 1981). Remand is warranted where  
8 additional administrative proceedings could remedy defects in the decision.  
9 Lewin, 654 F.2d at 635. Based on the foregoing, the Court finds that remand is  
10 warranted for clarification as to the impact, if any, of Plaintiff’s mental  
11 impairments on her RFC.

12 **V.**

13 **CONCLUSION**

14 For the reasons stated above, the decision of the Social Security  
15 Commissioner is REVERSED and the matter is REMANDED for further  
16 proceedings consistent with this opinion.

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18 Dated: June 24, 2014



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21 DOUGLAS F. McCORMICK  
22 United States Magistrate Judge  
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